

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY AP
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No 51913-5-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

SKIPPER W KUZIOR,

Petitioner,

Vs

Defendants

Tacoma Schools, Lincoln Tree Farm

RESPONSE TO RESPONDANTS BRIEF

Pro Sea

Attorney for Appellant

Mark F. O'Donnell

Attorney for Appellee

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TABLE OF AUTHORITIES.....

Gamboa v Clark, 180 Wn. App. 256, 321 P.3d1236 2014

Cuillier v. Coffin, 57 Wn.2d 624, 627 (1961)

Drake v Smersh, 122 Wn. App. 147,153-4, 89

P.3d726(2004)

Roediger v Cullen, 26 Wn.2d 690

Wels v Hippie 269Or. App785, 787(2015)

STATUTES.....

RCW 61.24.050

RCW 4.24.630

CONSTITUTIONAL AUTHORITY.....

6th Amendment of US Constitution “Just Compensation”

for a State or government agency acquiring land

RESPONSE TO RESPONANTS BRIEF.....

I want to keep this short and sweat my lawsuit is about an easement I am part of Rainier Ranches . Survey 1473 recorded in volume 15 pg 44 under auditors#1444 clearly shows the 30 31 section line there is 380 feet missing off of every lot 13 – 19. This excludes the wetlands segregation following muck creek. This change happened in 2012. I am not to be party to a quite title affecting these six individuals rights. We have already had a surveyor licensed in pierce county show us this boundary

Under RCW 61.24.050 the Wilsey and Ham survey is simply invalid it was filed in June 1981 and recorded in around the year 2003 hence the

vol 043 page 2428 Lincoln Tree farm had to do this simple one page survey when they took timber from Don McNivvin's parcel to the south. Lincoln Tree farm was of course in the wrong and removed their T posts and

moved them to the correct location. Don was never paid for the stolen timber under **RCW 4.24.630** he should have been. I had a sworn affidavit and was never able to bring it we were served by email without our consent and did not have a chance to react

As for Daniel Roup's work was he confused the Wilsey and Ham survey clearly shows a measurement of 94.27 feet were he placed my parcel on his Group 4 Sketch. On my survey the south boundary measures 237.99 wow congratulations I found the 200 feet of ingress egress from section 36 bordering section west sections 31. This **200 ft easement** travels north south parallel to Meeker's Meridian it is also known as Canyon Road East see **CP Stewart title guarantee page 6 of 7 PARCEL A** SECTION 36, Township 18 North lying east of State Route 5 (History of state route 5 abandoned since 1890 in this section follows the Puget Sound Meridian AKA the government lots to the west of Lincoln tree farm. Washington States

prime Meridian from 1830-1890 used by James Tilton 1st surveyor General Washington Territory)Note Highway 7 Historic name Rice

Candle in this section travels Mr. Candle was a friend of the family that stayed on our donation land claim for a time. The road was moved to the west side of our Donation land claim cert 617 after hostilities from territorial militia and governor Sir Isaac Stevens The Lander case.

I would love to help your expert witness get his surveying degree I got my certificate in 1999. 2303 is a survey 2834150 is my title description. On the top right corner of 2303 it reads Lots one may be limited to limited to building site feasibility due to the steepness of the slope across the southeasterly portion of these lots **My recorded legal description describes this second parcel that includes my 30' wide private easement 2834150** **Parcel D**I have started a title insurance claim to try to get my correct land title back

The land in question is my family's old growth forest. I have the honor of living here **I want to work with the school to preserve this historic documented native American land in my family since the 1820s** The slanderous venomous lies and deceit perpetrated by Tacoma schools by and thru there attorneys needs to stop. To call me a vexscious litigator is

proof in itself that they have been working with my families' former attorneys' GTH in a monumental conflict of interest and conspired to help with their illegal overlap survey.

ARGUMENT.....

The court allowed MR. ODONNELL to present color coded exhibits at the trial VRP page 5 line 24-25 entirety of page 7 lines -25. ODONELL then used these exhibits to confuse The Honorable Frank Cuthbertson.

These exhibits had Frank Cuthbertson so confused he granted Quiet title over some hand drawn sketches done by ODONNELL with colored sharpies. VRP page 9 line 15-23 THE COURT: Okay the document suggests this easement that was conveyed is in the southern part where Mr. O'Donnell indicated in green the Easement is. And so it doesn't in any way impact, that I can see, Mr. Kuzior's claim,

and its clear what the boundary line is now and its clear where that easement is. And, so, candidly, I don't see anything that would preclude us from quieting title to Lincoln Tree farm itself.

The error was great the easement follows the centerline of Section 36 this easement was purchased and can not be moved.

The hand drawn sketch showing the easement in the southern Portion of Lincoln Tree Farm was deliberate Title Slander to my Families recorded Easement and should never have been used for For these purposes. The 2017 Roup survey changes the direction of this centerline and therefore removes easement according to the survey. My 2015 title was changed as well to parallel the new centerline I bought directly from family and my title was re-recorded 2018 to correct this deliberate error and return my

building parcel A combined for tax purposes with my wetlands
combination recombination parcels C and D.

ASSIGNMENT OF ERROR.....

The most obvious assignment of error would be the Title
Slander perpetrated by attorney O'Donnell the night before trial.

He used a sharpie to mock a binding prescriptive Easement
and change the outcome of the preliminary ruling. VRP page 2 -3
line22 -2 The court: And while I know that Mr. O'Donnell had
moved to strike the pleading, nonetheless, the quiet title, which was
one of the requests' from defendants, it just is slightly different
issues and there may be issues of fact to be resolved regarding the
quiet title.

Fact :Mr. Roupe gave an opinion VRP page 4 line 10-11

ODonnel: So he's unequivocally testified there are no easements that

are shown in either the of the recorded titles or any recorded surveys.

This misrepresentation of an opinion to an unequivocal testimony

Was not supported by the facts

ISSUES RERTATED TO ASIGNMENTS OF ERROR...

Adverse possession and prescriptive easements are complicated concepts to most landowners. Valuable property rights can be lost to strangers and land rustling neighbors, the courts can sometimes reward longtime bad behavior. The

Washington Supreme Court has recently made a decision to promote harmony in Washington State, and make prescriptive easements tougher to establish in the case of *Gamboa v. Clark*, 183 Wn.2nd 38, 348 P.3d 1214 (2015). The Gamboas and Clarks owned adjoining parcels of enclosed

agricultural land which had originally been part of one larger parcel separated by a primitive road, this gravel road crossed the Clarks' property. The road was used by the Gamboas to access their home and by the Clarks for farming grapes on their parcel. The road had been used by both parties and their predecessors for these purposes for decades. Each was aware of the other's use of the road, and neither party gave the other permission, objected or interfered with the other's use. After an unrelated dispute arose between the parties in 2008, the Gamboas brought an action seeking a prescriptive easement to use the gravel road to the extent on the Clarks' property. The Court found that the elements of a prescriptive easement were all present in this case, with the possible exception of "adversity". The Gamboas' use of the road was "open, notorious, continuous, hostile and uninterrupted over the prescriptive period of ten years" and the Clarks had "knowledge of such use at the time when [they] would be able at law to

assert and enforce his or her rights.” Incidentally, it’s not clear to me how the use can be found to be “hostile” without also being “adverse”.

In certain circumstances, Washington courts have found that a use of someone’s property will be presumed to be with the owner’s permission and therefore not “adverse”. For example, in the case of unenclosed lands, the regular crossing of another’s property is presumed to be with permission. *Roediger v. Cullen*, 26 Wn.2d 690. A presumption of permissive use also applies to enclosed or developed land cases when it is “reasonable to infer that the use was permitted by neighborly sufferance or acquiescence.” The third situation recognized was when the owner created the road and the claimant’s use did not interfere with the owner’s use. *Cuillier v. Coffin*, 57 Wn.2d 624, 627 (1961). In this case, the trial court ruled that because the land was enclosed, there was no presumption of permission from the Clarks, and in effect, accepted a presumption of

adverse use. In this close case, that shift from a presumption of permissive use, to placing on the Clarks the burden of establishing permissive use, led to the ruling that the Gamboas were entitled to a prescriptive easement to use the gravel road over the Clarks' property. Division III of the Court of Appeals disagreed, and found that the trial court erred in not recognizing that the Clarks should enjoy a presumption of permissive use, placing on the Gamboas the burden of rebutting that presumption to show their use was "adverse". *Gamboa v. Clark*, 180 Wn. App. 256, 321 P.3d 1236 (2014). This can be done by presenting evidence that the claimant's use was "adverse and hostile to the rights of the owner" such as by showing he "interfered with the owner's use of the land in some manner" or that the owner's acts or statements acknowledged the claimant's right to an easement.

Interestingly, Division I of the Washington Court of Appeals (*Drake v. Smersh*, 122 Wn. App. 147, 153-54, 89 P.3d 726

(2004)) as well the Oregon Court of Appeals (*Wels v. Hippe*, 269 Or. App 785, 787 (2015)) have recently taken positions more closely aligned with the trial court approach to the presumption of adversity. However, the Washington's Supreme Court held that even in cases of enclosed land, "an initial presumption of permissive use applies to enclosed or developed land cases in which there is a reasonable inference of 'neighborly sufferance or acquiescence.'" *Id.* at 1220. "Showing a reasonable inference of neighborly sufferance or acquiescence is a fairly low bar." *Id.* at 1221. In this case the fact that both parties knew the other used the road and didn't object, and the use did not interfere with the owner's use of its land, was enough to create this inference. No prescriptive easement. I can live with this decision, and it fits the traditional Scottish silent but sharing culture of the Northwest. Why put the burden on the neighbor who allows a neighbor to use his or her road to be nasty to make sure he or she doesn't lose property rights? Why encourage more fence building when a policy which

assumes that neighbors will be generous with each other creates
a more pleasant atmosphere? Even with the new property lines
1102 feet removed from their historic boundaries I have
continue to allow children to access my trail to see the old
growth forest my family has preserved since the 1820's

STATEMENTS OF THE CASE.....

Quieting Title to improperly filed overlap surveys erasing
Prescriptive easements. Moving large lot boundaries to expand
government holdings without paying just compensation is a violation
of the sixth amendment of the US Constitution. Schools are rich they
take money from everyone in property Tax to take the very property
they Tax would make land worthless therefore how can a citizen pay
tax on an asset with no intrinsically pertinent Tax value

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CONCLUSION.....

This lawsuit was generated to deal with the issue of access to my families Native American Historical site **Tree Point no Point** a 500 year old plus Historical site were my family protected the indigenous tribes from being slaughtered by territorial militia, General Montgomery, Coronial Shaw of the Confederate Army Sir Isaac Stevens territorial governor.

Our families tree is located were the Puget Sound Median Washington States prime meridian from 1840-1890 meets Muck Station **Puget Sound Agriculture** HBFTC 40 acre government Lots were painstakingly surveyed by my family and members of the Cowlitz Tribe to make sure all of our cousins would not have to move from their homes. These survey line transverses accurately south to Willamette Station in the Oregon territory.

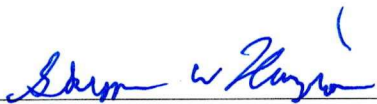
We also maintain a base line to A Historic cabin overlooking chambers bay were the stokers for the steamship Beaver

would reside. Chop wood for two days to travel one day so goes the Legend of the Beaver.

My wife has handicap legs her Mother Angel is related to the Gleason's we accrued the property from Daniel Gleason was a direct descendant of Daniel Mounts as well as John McLeod our legendary Ancestor.

Dismissing the timber theft from steelier school as well as the destruction of our Lean to was not a sighs of weakness' I want to work with the School as well as the county to get this beautiful early Washington state history out to the public. I want to share our families **Tree Point no Point** that saved so many lives in the past and protected so many others

Dated this 24 day of April 2019



Skipper W Kuzior #

1
2 **DECLARATION OF SERVICE**

3
4
5 The undersigned declares under penalty of perjury under the laws of the State of
6 Washington that on this day the undersigned caused to be served in the manner indicated below a
7 copy of the foregoing document directed to defendants and the following individuals:

8 *Response* Appealers' Brief, Motion ~~dismissing council extend time for Brief~~

9
10
11 **Mark F O'Donnell**

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14 modonnell@pregodonnell.com

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15
16
17 ☐ Via hand delivery Courier service

18 ☒ Via E-Service or email with

19 Recipient's approval

20 ☒ Via First Class mail postage paid

21 ☐ Via Certified Mail

22
23
24 Dated at Tacoma Washington this 29 ^{*April*} day of ~~January~~ 2019

25
26 *Skipper W Kuzior*

27 SKIPPER WILLIAM KUZIOR